



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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DIRECTOR

July 25, 1994  
AO-94-20

Representative Timothy J. Toomey, Jr.  
Massachusetts House of Representatives  
State House - Room 254  
Boston, MA 02133

Re: Establishment of scholarship funds

Dear Representative Toomey:

This letter is in response to your April 13, 1994 request for an advisory opinion regarding the legality of your political committee establishing and administering scholarship funds. I apologize for the delay in my response.

You have stated that your political committee would like to establish scholarships at both Somerville High School and Cambridge Rindge & Latin High School. The preliminary estimate for the amount to be contributed would be \$1,000, divided evenly between both schools. You have asked several questions, each of which I will respond to individually after discussing the relevant statutory and regulatory limitations on charitable gifts.

M.G.L. c. 55, s. 6 provides, in pertinent part, that political committees organized on behalf of candidates for state representative:

may receive, pay and expend money or other things of value for the enhancement of the political future of the candidate . . ., for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use, provided, however, that the director shall establish reasonable rules and regulations concerning such expenditures . . . [emphasis added].

Expenditures designed to enhance a candidate's political future, in addition to not being for "personal use," must also bear a reasonable connection to the candidate's nomination or election to office. See M.G.L. c. 55, s. 1.

Pursuant to M.G.L. c. 55, ss. 3 and 6, the office has issued regulations and advisory opinions to further define expenditures which may be made by political committees. A political committee may make charitable contributions only if the following requirements, as set forth in 970 C.M.R. 2.06(a), are met:

1. The contribution is made to a charitable, religious, or non-profit entity subject to either M.G.L. c. 12, section 8(f), M.G.L. c. 67 or M.G.L. c. 180.
2. Neither the candidate, treasurer nor any other officer of the committee may be a trustee, officer, principal or beneficiary or involved in any manner in the operations of the entity to which the contribution is made.
3. Neither the candidate, treasurer nor any other officer of the committee may be related by consanguinity or affinity to any trustee, officer, principal or beneficiary of said entity.
4. It is the usual and customary practice of the political committee to make such charitable contributions.
5. The political committee will receive publicity and foster political goodwill as a result of making the contribution.

We have stated that a political committee may make such contributions only if the total contributions are "incidental" to the committee's total expenditures. See AO-88-31.

This office has previously advised that ward, town and city party political committees may generally make expenditures for the awarding of a scholarship, provided the requirements established by the regulations are complied with. See AO-89-13 and AO-89-19. We have not previously considered issues raised by your questions relating to committees organized on behalf of an individual candidate "administering" a scholarship,<sup>1</sup> nor have we considered the propriety of such political committees conducting fundraisers specifically to raise funds for a scholarship.

Although you have not specifically asked if your committee can make an individual scholarship award, for the reasons which follow, your committee can make an award only if an individual or entity not associated with your committee administers the scholarship and selects the recipient of the award, and the making of the award otherwise complies with the regulations established by this office relating to the making of expenditures for gifts. See 970 CMR 2.06(3)(b)(2). Your committee may provide the initial contribution needed to start a scholarship program intended to have a continuing existence. Your committee may not, however, hold a fundraising event to benefit the scholarship program and may not administer the scholarship program.

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<sup>1</sup>. Although you have not defined the "administrative" tasks which you contemplate performing, we would anticipate that such tasks would include, but not be limited to: registering with the Attorney General's Division of Public Charities, filing reports with the Division, implementing procedures for raising money for the scholarship, selecting candidates for the scholarship, and determining recipients of the scholarship.

1. Would I be able to make an initial contribution from my campaign account to start the potential new scholarship account?

Yes. Provided the regulations issued by this office are complied with, your committee may make incidental transfers to a scholarship fund, or may make an individual scholarship award.

In particular, it is the opinion of this office that your committee may transfer money to a scholarship fund or make an individual scholarship award if the following requirements are met:

a. The contribution is made to a charitable, religious, or non-profit entity subject to either M.G.L. c. 12, section 8(f), M.G.L. c. 67 or M.G.L. c.180. If the contribution will be an initial contribution to a new scholarship fund, the person or persons who will administer the scholarship fund must register with the Attorney General's Public Charities Division.<sup>2</sup>

b. Neither the candidate, treasurer, chairman or any other officer of the committee may be involved in any manner in the administration of the scholarship or the selection of the recipient of an award.

c. Neither the candidate, treasurer, chairman or any other officer of the committee may be related by blood or marriage to the recipient of the scholarship award.

d. The committee undertakes that the practice of contributing to such scholarship funds has been or will become the usual and customary practice of the committee.

e. The committee will receive publicity and foster political goodwill as a result of creating the scholarship fund or the making of the award.

f. The total amount contributed to the scholarship fund or individual recipients of a scholarship is incidental to the total expenditures of the committee. This office would generally consider contributions in the aggregate amount of ten per cent or less of total annual expenditures to be "incidental."

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2. A person or entity administering a scholarship fund or soliciting funds for a scholarship is subject to the provisions of M.G.L. c. 12, ss. 8E and 8F and M.G.L. c. 68, s. 20. Such persons or entities are subject to registration and reporting requirements administered by the Attorney General's Public Charities Division. Prior to soliciting charitable funds in Massachusetts or having such funds solicited on its behalf, a charitable entity must register and obtain a Certificate of Solicitation from the Attorney General, and must file annual reports with the Attorney General. See M.G.L. c. 12, ss. 8E and 8F; and M.G.L. c. 68, s. 20.

2. Can the Toomey Committee have a fundraising event to raise money for the scholarship?

No. M.G.L. c. 55, a "comprehensive" law "intended to reach all political fundraising and expenditures within the commonwealth," Anderson v. The City of Boston, 376 Mass. 178 (1978), does not contain a provision allowing political committees to raise funds for charitable purposes. The absence of a provision allowing such activities is an indication that the Legislature did not contemplate that such activities would occur. See Anderson, 376 Mass. at 186.

In addition, a "contribution" is defined in the campaign finance law as "a contribution . . . for the purpose of influencing the nomination or election" of a candidate or for the purpose of promoting or opposing a question submitted to the voters. M.G.L. c. 55, s. 1. Contributions given for the purpose of creating a scholarship fund are not also given to influence a candidate's election, and in my opinion a contribution to a scholarship fund is not within the definition of "contribution" to a political committee organized on behalf of an individual candidate.

Finally, solicitation of charitable funds should be separate and distinct from solicitation of political contributions since each activity requires compliance with different regulatory requirements. A person or entity soliciting funds for a scholarship is subject to registration and reporting requirements administered by the Attorney General's Public Charities Division. See M.G.L. c. 12, ss. 8E and 8F; and M.G.L. c. 68, s. 20. A distinction between the requirements of the campaign finance law and the charitable solicitation requirements administered by the Attorney General avoids confusion regarding the nature of a group's registration and reporting requirements, and encourages full compliance with campaign finance and public charity laws.<sup>3</sup>

In sum, M.G.L. c. 55 requires those who would raise funds to make a distinction between fundraising for political purposes and fundraising for charitable purposes. Therefore, if your committee will make the initial contribution to create a scholarship fund, a person or persons not associated with the political committee should be given the responsibility of conducting the fundraiser, and complying with the requirements administered by the Public Charities Division.

3. Will I have to set up a new account to administer the funds?

Since your committee may not raise funds for the scholarship, a new account would appear unnecessary. Moreover, as discussed in the next section of this letter, your committee may not "administer" the scholarship.

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<sup>3</sup> In addition, maintaining the distinction between political and charitable fundraising is consistent with the differing treatment which may be given expenses incurred in each type of activity pursuant to Federal and state tax law.

The campaign finance law does not prohibit a committee organized to support a candidate for state legislature<sup>4</sup> from maintaining more than one checking account into which contributions are deposited and from which expenditures are made, provided the record-keeping, reporting, and disclosure requirements of M.G.L. c. 55 are complied with.

The committee can donate funds to the scholarship fund out of a "general" funds checking account. Similarly, the committee can also maintain a separate checking account from which such donations will be made. However, the committee must maintain records of and report all such campaign finance activity on a single disclosure form with this office, whether or not the committee maintains one checking account or more than one checking account.

4. Can your political committee be the administrator of the scholarship?

No. 970 CMR 2.06(a)2 prohibits charitable contributions where any candidate or officer of a political committee is "involved in any manner in the operations of the entity to which the contribution is made." The regulation was designed to maintain an arms-length relationship between the committee and the recipient of the committee's charitable contribution. Although solicitation on behalf of a scholarship would be permissible, administration, as defined in this opinion, would not be consistent with the regulation.

This opinion has been rendered solely in the context of M.G.L. c. 55. Please do not hesitate to contact this office if you have any additional questions.

Very truly yours,

  
Mary F. McTigue  
Director

MFm/cp

cc: Richard C. Allen, Assistant Attorney General  
Chief, Public Charities Division, Office of the Attorney General

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<sup>4</sup>. Committees organized to support candidates for statewide or county office ("depository candidates") must maintain only one account. See M.G.L. c. 55, s. 19.